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TORTS — LIABILITY OF STATE FOR TORTIOUS ACTS OF ITS EMPLOYEES

A county clerk, acting as agent for the Commissioner of Motor Vehicles, issued a certificate of registration of title to an automobile thief. The certificate of title was issued on a certificate of sale known to the clerk to have been stolen. The claimant purchased an automobile in reliance on this certificate of title, returned the automobile to its rightful owner and brought this action against the state of New York. *Held*, claimant awarded the purchase price of the automobile. *Paglia v. State*, 99 N.Y.S.2d 878 (Ct. Cl. 1950).

A state's sovereignty precludes it from being answerable in damages for injury resulting from the negligence of its agents.¹ This immunity is based on the common law doctrine that "the king can do no wrong,"² and applies not only to governmental functions but to other activities as well.³ The injured party is not deprived of his remedy against the tort-feasor, but the doctrine of *respondet superior* is held to be inapplicable.⁴ When not restricted by its constitution a state may, by statute, assume liability for the torts of its officers, agents, and servants.⁵ Such legislation can limit the liability and prescribe the terms of its imposition.⁶ Statutes in derogation of sovereignty must clearly express a waiver of immunity and be strictly construed.⁷

The waiver of such immunity in the New York Court of Claims Act⁸ is broad⁹ and has extended that state's liability to a point equal to that of an individual or a corporation.¹⁰ In the principal case the court based liability on the principle that one, in undertaking to do an act, although under no duty to do so, must perform it in a careful and prudent manner.¹¹ While

1. *Evans v. Marsh*, 158 Kan. 43, 145 P.2d 140 (1944); *Benjamin Foster Co. v. Commonwealth*, 318 Mass. 190, 61 N.E.2d 147 (1945); see *United States v. Moscow Seed Co.*, 14 F. Supp. 135, 136 (C.D. Idaho 1936).

2. *Moore v. Walker County*, 236 Ala. 688, 690, 185 So. 175, 177 (1938).

3. *Melvin v. State*, 121 Cal. 16, 53 Pac. 416 (1898) (injury at state fair from faulty bleachers); *Riddoch v. State*, 68 Wash. 329, 123 Pac. 450 (1912) (injury incurred when railing in state leased armory gave way. *Contra*: *Muses v. Housing Authority of San Francisco*, 83 Cal.App.2d 489, 189 P.2d 305 (1948) (housing authority entered competition with industry and labor and must be subject to the same liability)).

4. *Davie v. Regents of University of California*, 66 Cal. App. 689, 227 Pac. 247 (1924); *Heiser v. Severy*, 117 Mont. 105, 158 P.2d 501 (1945).

5. *Nordby v. Department of Public Works*, 60 Idaho 475, 92 P.2d 789 (1939); *McNair v. State*, 305 Mich. 181, 9 N.W.2d 52 (1943).

6. See *Mills v. Stewart*, 76 Mont. 429, 444, 247 Pac. 332, 336 (1926).

7. *Goldstein v. State*, 281 N.Y. 396, 23 N.E.2d 97 (1939); see *Smith v. State*, 227 N.Y. 405, 410, 125 N.E. 841, 842 (1920).

8. N.Y. COURT OF CLAIMS ACT § 12a.

9. See *Metildi v. State*, 177 Misc. 179, 180, 30 N.Y.S.2d 168, 169 (Ct. Cl. 1941); *Green v. State*, 160 Misc. 398, 290 N.Y. Supp. 36, 39 (Ct. Cl. 1936), *rev'd on other grounds*, 278 N.Y. 15, 14 N.E.2d 833 (1938).

10. *Adams v. State*, 264 App. Div. 978, 37 N.Y.S.2d 229 (3d Dep't 1942); *Robison v. State*, 263 App. Div. 240, 32 N.Y.S.2d 388 (4th Dep't 1942).

11. *Marks v. Nambil Realty Co.*, 245 N.Y. 256, 157 N.E. 129 (1927); *Glanzer v. Shephard*, 233 N.Y. 236, 135 N.E. 129 (1927).

this seems to go to great length in imposing liability on the state, still, it is within the spirit of the act,¹² and the result does not stand alone in uniqueness.¹³

The expansion of governmental activities and the every-day contact a citizen is required to have with these activities creates a need for legislation with results comparable to that reached in the instant case. The State of New York has provided for that need, and in so doing has set an example that may well be followed by other states.

TRUSTS — ANNUITIES — ANNUITANTS' CLAIM FOR PRINCIPAL SUM

A testator bequeathed annuities to named non-profit corporations for the benefit of his nieces for their lives. The annuitants claimed the right to take the principal sum bequeathed rather than the annuities. *Held*, that the annuitants cannot take the principal sum since the named corporations have a clear interest in the bequests of which they cannot be deprived by being compelled to turn over the entire fund to the annuitants. *Gilbert v. Findlay College*, 74 A.2d 36 (Md. 1950).

English courts, since 1797, have followed the rule that where an absolute annuity is given in a will, the annuitant has the right to elect to take the principal sum bequeathed for purchase of the annuity, in lieu of the annuity.¹ The courts reason—that enforcement of the purchase of the annuity would be nugatory and vain since the annuitant could sell the annuity the minute after it was purchased. In early American cases on this subject, the courts of Massachusetts² and New York³ adopted the English reasoning and applied their rule. Despite a testator's direction to the contrary, the rule was applied and the annuitant was given the right of election

12. See *Jackson v. State*, 261 N.Y. 134, 138, 184 N.E. 735, 736 (1933) (in which the court said, "The statute constitutes a recognition and acknowledgment of a moral duty demanded by the principles of equity and justice.").

13. *Metildi v. State*, *supra* note 9 (failure of building inspector to warn workmen of dangerous condition of building being demolished was negligence sufficient to state a cause of action); *Kittle v. State*, 345 App. Div. 401, 284 N.Y. Supp. 657 (3d Dep't 1935), *aff'd*, 272 N.Y. 420, 2 N.E.2d 850 (1936) (failure to warn invitee of danger in state park, or to erect guard rails constituted negligence creating liability against state); *Tortora v. State*, 244 App. Div. 861, 279 N.Y. Supp. 794 (3d Dep't), *aff'd*, 269 N.Y. 167, 199 N.E. 44 (1935) (having undertaken to furnish prisoners with heated shelter, state was liable for injury caused by negligent operation of stove).

1. *Barnes v. Rowley*, 3 Ves. Jr. 305, 30 Eng. Rep. 1024 (1797); *Bailey v. Bishop*, 9 Ves. Jr. 6, 32 Eng. Rep. 501 (1803); *Palmer v. Crawford*, 3 Swan 483, 36 Eng. Rep. 945 (1819); *Dawson v. Hearn*, 1 Russ. & M. 606, 39 Eng. Rep. 232 (1831); *Ford v. Batley*, 17 Beav. 303, 23 L.J.Ch. 225, 51 Eng. Rep. 1051 (1860); *Re Mabbett, Pittman v. Holborrow*, 1 Ch. 707 (1891).

2. *Parker v. Cobe*, 208 Mass. 260, 94 N.E. 476, (1911).

3. *In re Cole's Estate*, 219 N.Y. 435, 114 N.E. 785 (1916); *Reid v. Brown*, 54 Misc. 481, 106 N.Y. Supp. 27 (Surr. Ct. 1907).